

No. 25-6536

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TODD R.G. HILL,

Plaintiff–Appellant,

v.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS
OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants–Appellees.

On Appeal from the United States District Court
for the Central District of California
No. 2:23-cv-01298-JLS-BFM
Hon. Josephine L. Staton

OPENING BRIEF OF APPELLANT

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DISTRICT COURT DOCKET REFERENCES

- ECF 102 (RJN of Exhibits 201A & 201B; (201A) *Action on Inspection Report, Probationary Status, and Termination of Registration – PCL* (Dec 14 2023, 192 pp.); (201B) the State Bar news release announcing withdrawal of registration.)
- ECF 132 (R&R: Adopted narrow “existence-only” standard under *Lee v. City of L.A.*, 250 F.3d 668 (9th Cir. 2001). Denied consideration of the exhibits’ substance.)
- ECF 197 / ECF 199 (Judicial notice motions.)
- ECF 213 (R&R for Third Amended Complaint; Rule 15 proposed STAC)
- ECF 217(Plaintiff’s Objections and Request for de novo review.)
- ECF 248 (Order accepting Interim R&R; TAC stage)
- ECF 263 – Spiro’s motion to dismiss the 4AC.
- ECF 276 / ECF 290 / ECF 301 / ECF 329 (Judicial notice motions and related filings.)
- ECF 286 (Rule 59(e) motion—TAC stage; later denied as premature at interlocutory stage of proceeding.)
- ECF 298 (RJN & supplemental brief supporting ECF 286)
- ECF 310, 330, 313 (Proposed Fifth Amended Complaint; Motion to amend; Corrected Proposed Fifth Amended Complaint lodged)
- ECF 333 (PCL Defendants’ Opposition to Plaintiff’s Motion for Leave to Amend Fourth Amended Complaint (Rule 15(a)(2)).
- ECF 338 (Plaintiff’s Reply in Support of Motion for Leave to Amend Fourth Amended Complaint (Rule 15(a)(2)).
- ECF 347 (Order denying premature 59(e)/§1292(b)/54(b))
- ECF 348 – Magistrate’s R&R on the Fourth Amended Complaint
- ECF 351 – Your Objections and Request for de novo review of ECF 348.
- ECF 358 (Order: adopts R&R with modification; denies RJNs; denies leave to amend; dismisses)

- ECF 360 (Plaintiff's Rule 59(e) motion—post-judgment)
- ECF 362 (Spiro joinder)
- ECF 363 (Plaintiff's 59(e) reply)
- ECF 365 (Order denying Rule 59(e))

INTRODUCTION

This appeal seeks a limited remand so that the district court can (1) make exhibit-by-exhibit judicial-notice and incorporation rulings tied to the Rule 12(b)(6) analysis, (2) conduct a focused Rule 15(a)(2) futility review that squarely engages the Corrected Fifth Amended Complaint and the alternative TAC request, (3) revisit the TAC-stage Equal Protection and immunity rulings under the proper standards with an opportunity to amend, and (4) clarify the jurisdictional basis for dismissal of the state-law claims, including how Hill's post-relocation diversity allegations were treated. Hill appears *pro se*.¹ The questions he presents are narrow and procedural.

Hill contends that the district court (1) handled judicial notice and incorporation in a way that left unclear which documents and factual propositions underlay the Rule 12(b)(6) dismissal; (2) denied leave to amend without addressing the new allegations set out in the lodged Corrected Fifth Amended Complaint; (3) resolved the Equal Protection claim at the Third Amended Complaint stage in a manner that foreclosed targeted amendment to add comparator and intent allegations; (4) entered a judgment whose jurisdictional basis for the disposition of state-law claims cannot be discerned from the face of the record; and (5) summarily rejected the RICO claim without a reasoned application of *Canyon County, Bridge*,

¹ Mr. Hill holds a J.D. and is an LL.M. candidate at Texas A&M University School of Law. He is a registered law student with the State Bar of California and the State Bar of Texas. Mr. Hill appears *in propria persona* in this matter.

Eclectic Properties, and *Kayport* constituting legal error warranting remand for proper application of those standards..

A grant of the narrow remedy requested would render the judgment reviewable on a defined record and explicit jurisdictional footing, ensure that any dismissal rests on a transparent evidentiary record and clearly stated jurisdictional basis, and preserve the district court's role as the primary forum for merits determinations.

JURISDICTIONAL STATEMENT

The district court entered final judgment on August 20, 2025 (1-ER-10 [ECF 359]), following its order adopting the magistrate judge's recommendations with modifications (1-ER-11 [ECF 358]). The court denied Hill's timely Rule 59(e) motion on September 26, 2025 (1-ER-2 [ECF 365]). Hill filed a notice of appeal on October 16, 2025, within 30 days of the Rule 59(e) order. See 28 U.S.C. § 1291; Fed. R. App. P. 4(a)(4)(A)(iv).

This Court has jurisdiction under 28 U.S.C. § 1291 to review the final judgment and all prior interlocutory rulings that merged into that judgment, including the TAC-stage order (1-ER-40–42 [ECF 248]) and the dismissal/RJN order (1-ER-11–13 [ECF 358]) and the post-judgment Rule 59(e) order (1-ER-2–9 [ECF 365]).

STATUTORY & REGULATORY AUTHORITIES

Pertinent statutes and rules are reproduced in the Addendum in accordance with 9th Cir. R. 28-2.7.

ISSUES PRESENTED

1. Judicial Notice and Record Clarity.

Whether the district court complied with 28 U.S.C. § 636(b)(1) and Fed. R. Evid. 201 in resolving the Rule 12(b)(6) motions, where it limited judicial notice of official State Bar records to their “existence,” later denied all merits-adjacent judicial-notice requests in bulk, adopted the magistrate judge’s report “with modification” without explaining the modification, and did not identify which noticed facts or incorporated documents it relied on in dismissing the complaint.

2. Rule 15 and Futility.

Whether the district court abused its discretion under Fed. R. Civ. P. 15(a)(2) by denying leave to file the Corrected Fifth Amended Complaint—and by failing to rule on an alternative TAC amendment request—where the proposed pleadings added specific jurisdictional and factual allegations directed at the perceived defects, and the court did not address those new allegations in finding futility or denying amendment with prejudice.

3. Equal Protection, State Action, and Prospective Relief.

Whether the district court correctly dismissed Hill’s Equal Protection claim at the TAC stage with prejudice and without leave to amend, where the pleadings alleged a racial component in State Bar oversight of PCL, sought to

add comparator and intent allegations under *Village of Arlington Heights* and *Students for Fair Admissions*, and requested prospective, non-monetary relief against individual State Bar officers, and where the court treated the State Bar and its officers as categorically immune rather than applying the usual state-action and *Ex parte Young*, 209 U.S. 123 (1908) frameworks.

4. State-Law Claims and § 1367(c).

Whether the final judgment clearly indicates the jurisdictional basis on which the state-law claims were dismissed, where the orders describe those claims as dismissed “without prejudice and without leave to amend,” refer to lack of diversity and the possibility of refile in state court, but do not specify whether dismissal rested on 28 U.S.C. § 1367(c)(3) or on a merits or jurisdictional ruling.

5. Diversity Jurisdiction, RICO and Curative Allegations.

Whether, after Hill relocated to Texas and the Fourth and proposed Fifth Amended Complaints alleged his Texas domicile, the defendants’ California citizenship, and continuing harm from the same course of conduct, the district court was required under 28 U.S.C. § 1653 and this Court’s curative-amendment precedent, including *Rosenwald v. Kimberly-Clark Corp.*, to consider those allegations and to enter judgment on a jurisdictional ground that “affirmatively and distinctly appears” on the record, rather than treating the earlier, non-diverse complaints as permanently controlling.

STATEMENT OF THE CASE AND FACTS

I. Factual Background

Appellant Hill filed the initial action asserting federal civil rights, RICO, and state-law claims against Peoples College of Law (PCL) and members of its governing board. The operative complaint alleged that PCL and its board engaged in a pattern of conduct that concealed the school's regulatory non-compliance. Hill contended that this alleged concealment served two principal purposes: first, to induce students to enroll and enter into tuition and enrollment contracts; and second, to support fundraising efforts by presenting PCL as compliant and stable. According to the complaint, the concealment was accompanied by the issuance and maintenance of inaccurate or falsified academic records. Hill further alleged that PCL used these transcripts as collection or "caption" tools—that is, that the errors or falsifications on the records limited students' ability to transfer without academic or financial penalty. The pleading also asserted that PCL later chose to correct the transcripts of certain students, while declining to correct others, including Hill's, despite similar underlying recordkeeping errors across students. The complaint further alleged that PCL awarded Hill fractional units and did not provide a 4L year, which, in Hill's view, resulted in the non-award of his degree.

II. Regulatory Oversight and State Bar Involvement

Hill additionally named the State Bar of California and certain officials in their individual capacities as defendants. The operative pleadings alleged that the State Bar exercises statutory oversight over California-accredited and registered law

schools and has a public-protection mandate with respect to legal education programs that prepare students for admission to the bar. Hill asserted that PCL fell within this regulatory framework and that the State Bar's oversight decisions formed part of the context for the injuries he alleges.

According to the complaint, the State Bar was aware of PCL's regulatory deficiencies but maintained a publicly described "non-intervention" posture toward the school. Hill alleged that, in practice, student complaints about PCL were routed back to the institution for handling rather than investigated or pursued independently by the regulator, and that this practice conveyed that PCL's violations were unlikely to result in meaningful regulatory enforcement. The pleadings further alleged that this approach allowed PCL to continue enrolling students, collecting tuition, and issuing transcripts under the same conditions that Hill challenged in his claims.

The complaint also described specific regulatory actions and communications by State Bar officials, including monitoring PCL's status, placing the school on probation, communicating with PCL regarding remedial measures and potential termination, and issuing public announcements concerning PCL's authorization to operate. Hill alleged that these oversight decisions, taken while PCL continued to enroll students and issue academic records, were closely connected to the continuing effects he attributes to the transcript practices and degree non-award. During the pendency of the district court proceedings, the State Bar formally revoked PCL's authority to operate as a law school, effective May 31, 2024.

III. Procedural History

This This appeal arises from a final judgment dismissing Plaintiff-Appellant Todd R.G. Hill's Fourth Amended Complaint—dismissing the federal RICO claim with prejudice and the state-law claims without prejudice and without leave to amend—after the district court adopted the magistrate judge's Report and Recommendation “with the modification noted in No. 9.” 1-ER-10–13.

After Defendants answered the First Amended Complaint (“FAC”), the court sua sponte dismissed the FAC and directed Hill to file an amended complaint within a specified period, which he did. [2-ER-___].

At the Third Amended Complaint (“TAC”) stage, the district court accepted the magistrate judge's Interim Report and Recommendation, denied Hill's motion to strike, and ruled on several Rule 201 requests. 1-ER-40–42. The TAC-stage order granted judicial notice only in limited respects (such as the existence or dates of certain filings or communications), dismissed specified claims and parties, and granted thirty days to file a Fourth Amended Complaint subject to stated constraints. 1-ER-40–42. The order further directed that any claim dismissed without leave, or any party dismissed with prejudice, could not be re-asserted in the Fourth Amended Complaint. 1-ER-42.

Hill then filed the Fourth Amended Complaint (“4AC”). While the 4AC and Defendants' motions to dismiss were pending, Hill submitted a Notice of Submission of a Proposed Fifth Amended Complaint (“5AC”) (ECF 310), a Corrected Proposed Fifth Amended Complaint (ECF 313), and the court-ordered redline

comparing the 4AC and Corrected 5AC (ECF 317). He simultaneously moved for leave to amend under Rule 15(a)(2), incorporating the Corrected 5AC by reference (ECF 330).

The Corrected Proposed Fifth Amended Complaint added further jurisdictional and factual allegations directed at defects identified in prior orders, including clarified Government Claims Act presentment and rejection dates with the attached claim and rejection letter; additional, date-stamped emails and billing communications regarding transcript and billing issues; incorporation of State Bar oversight materials and FYLSX outcomes to support Equal Protection and RICO theories; clarification that previously dismissed State Bar officials were referenced only for factual context and not re-named as defendants; and explicit linkage between PCL's academic practices and the State Bar's May 31, 2024 revocation of PCL's degree-granting authority, supported by attached exhibits. See ECF 313, 317. PCL Defendants opposed leave in ECF 333, invoking Local Rule 7-3, the number of prior amendments, and assertions of delay, prejudice, and futility; Hill replied in ECF 338, relying on *Foman*, *Lopez*, and *Eminence Capital* to argue that the Corrected 5AC's new allegations warranted leave to amend.

Thus, by the time of the 4AC ruling, the record included proposed curative pleadings at both the TAC and 4AC stages (the alternative TAC and the Corrected Proposed 5AC) along with supporting Rule 201 requests and Rule 15 briefing. See, e.g., ECF 197, 199, 276, 290, 301, 329 (judicial notice motions); ECF 310, 313, 317, 330, 333, 338 (Rule 15 filings).

During the pendency of the dispositive motions, the case was reassigned from Judge Staton to Judge Valenzuela and then reassigned back to Judge Staton following Judge Valenzuela's recusal. The final Rule 12(b)(6) dismissal, denial of leave to amend, and Rule 59(e) order were all entered by Judge Staton. 1-ER-8–13.

In its final order, the district court adopted the magistrate judge's R&R "with the modification noted in No. 9," granted Hill's request to file a sur-reply, and denied as moot certain procedural motions. 1-ER-11–12. The court denied Hill's motion for leave to file the Corrected Proposed 5AC and granted Defendants' motions to dismiss to the extent they sought dismissal for failure to state a claim. 1-ER-12. The court dismissed the RICO claim with prejudice, dismissed the remaining state-law claims without prejudice and without leave to amend, and directed the Clerk to enter judgment. 1-ER-12–13. Judgment was entered the same day. 1-ER-10.

Earlier, the district court had denied Hill's motion for reconsideration of the TAC-stage acceptance order. 1-ER-36–39.

Hill timely moved under Rule 59(e) to alter or amend the judgment. In its September 26, 2025 order (ECF 365), the district court denied that motion, reasoning, among other things, that the adopted futility analysis supported denial of further amendment, that the state-law dismissals did not preclude refileing in state court, and that diversity jurisdiction was lacking at inception. 1-ER-8–9. Hill's Rule 59(e) motion specifically argued that judgment had been entered while later Rule 201 motions remained unresolved and the Corrected 5AC had not been

addressed, and that this sequence impaired the development of a record suitable for appellate review. See ECF 360 at 15–18.

STANDARDS OF REVIEW

Questions of law, including the interpretation of statutes and constitutional provisions, are reviewed de novo. See *United States v. Hinkson*, 585 F.3d 1247, 1251 (9th Cir. 2009) (en banc).

Whether the district court complied with 28 U.S.C. § 636(b)(1) in adopting a magistrate judge’s report and recommendation is a question of law reviewed de novo. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

A dismissal for failure to state a claim under Rule 12(b)(6) is reviewed de novo. See *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012).

The denial of a motion to alter or amend the judgment under Rule 59(e) is reviewed for abuse of discretion. See *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

The denial of leave to amend under Rule 15(a)(2) is reviewed for abuse of discretion, and underlying legal determinations are reviewed de novo. See *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (per curiam).

In reviewing a denial of leave to amend, courts consider factors such as bad faith, undue delay, prejudice to the opposing party, repeated failure to cure deficiencies, and futility. See *Foman v. Davis*, 371 U.S. 178, 182 (1962).

A district court's decision to take or deny judicial notice, and its incorporation-by-reference determinations at the pleading stage, are reviewed for abuse of discretion, with any underlying legal questions reviewed de novo. See *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998–99 (9th Cir. 2018).

Dismissal of a constitutional claim, including an Equal Protection claim, for failure to state a claim is reviewed de novo, and the related denial of leave to amend is reviewed for abuse of discretion. See *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

Whether sovereign immunity or quasi-judicial immunity bars suit is reviewed de novo. See *Miller v. Davis*, 521 F.3d 1142, 1145 (9th Cir. 2008).

Subject-matter jurisdiction, including the existence of diversity jurisdiction and the sufficiency of jurisdictional allegations under 28 U.S.C. § 1653, is reviewed de novo. See *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 611 (9th Cir. 2016).

A district court’s decision to decline supplemental jurisdiction over state-law claims under 28 U.S.C. § 1367(c) is reviewed for abuse of discretion. See *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997) (en banc).

SUMMARY OF THE ARGUMENT

Hill seeks a limited remand so the district court can clarify the Rule 12 record, make exhibit-specific judicial-notice and incorporation rulings, conduct a focused Rule 15(a)(2) futility review keyed to the Corrected Fifth Amended Complaint and alternative TAC request, revisit the TAC-stage Equal Protection and immunity rulings with an opportunity to amend, and state the jurisdictional basis for dismissal of the state-law claims, including how his post-relocation diversity allegations were treated.

I. Judicial Notice and Record Clarity: The Rule 12(b)(6) dismissal rests on an undeveloped notice/incorporation record that impairs review.

The existing record does not clearly reveal what materials the district court considered, or for what purposes, in granting the Rule 12(b)(6) motions. The magistrate judge granted judicial notice of key State Bar documents only as to their “existence,” without specifying what adjudicative facts were accepted from them,

and later Rule 201 motions from both sides were denied in bulk in the final dismissal order. Because plausibility and futility were evaluated against a backdrop of public records and incorporated documents (including official State Bar findings about PCL’s violations and closure) this Court cannot determine with confidence which exhibits the district court treated as part of the Rule 12 record, what facts were accepted from them, or how the unexplained “modification” affected that analysis. To the extent the R&R invoked Rule 9(b), it did so without addressing whether the operative pleading actually satisfied the Ninth Circuit’s requirement that RICO predicate acts sounding in fraud be pleaded with “the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation.” *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540–41 (9th Cir. 1989).

A narrow remand directing exhibit-by-exhibit judicial-notice and incorporation rulings, and an explanation of the “modification,” would cure that opacity and bring the handling of those materials into alignment with Rule 201 and this Court’s decisions in cases such as *Khoja*.

II. Rule 15 and Futility: leave to amend was denied without a reasoned analysis keyed to the Corrected Proposed Fifth Amended Complaint’s curative allegations.

The court denied leave to amend without engaging the curative allegations in the Corrected Proposed Fifth Amended Complaint (“Corrected 5AC”) and without ruling on Hill’s alternative TAC amendment request. The Corrected 5AC was lodged and fully briefed and supplied concrete jurisdictional, comparator, intent,

and damages allegations directed at the gaps the magistrate had identified. The dismissal order, however, denied the Rule 15 motion and multiple Rule 201 requests in one sentence, without a futility analysis keyed to those new allegations. The Rule 59(e) order then treated the omission as “harmless” on the ground that the Corrected 5AC was attached elsewhere. Under Rule 15(a)(2), and cases such as *Foman*, *Lopez*, and *Eminence Capital*, that is not enough: the court was required to evaluate the proposed new facts and explain why amendment would be futile, particularly where the proffered pleading also clarified jurisdictional facts under 28 U.S.C. § 1653. A limited remand directing an express futility analysis keyed to the Corrected 5AC, and an explicit ruling on the alternative TAC request, would restore the discretionary framework that Rule 15 and this Court’s amendment and curative-jurisdiction precedent contemplate.

III. Equal Protection, State Action and *Ex parte Young*: The TAC-stage dismissal applied the wrong lens and effectively foreclosed amendment and prospective relief.

The TAC-stage Equal Protection dismissal, coupled with the dismissal of the State Bar officers with prejudice and the directive that they not be re-named, effectively foreclosed the only state-actor pathway for federal Equal Protection and prospective *Ex parte Young* relief, even though the magistrate recognized a “racial component” to the dispute. Subsequent pleadings supplied the comparator and intent detail the court found missing, including differential transcript correction (Popp versus Hill), regulator awareness of disparities and violations, departures from ordinary enforcement, and continuing effects. Under established Equal

Protection doctrine, sustained disparities, notice to responsible officials, and selective enforcement can support an inference of discriminatory purpose or at least warrant targeted leave to amend. Because the later futility ruling never confronted those proffered curatives or the non-monetary nature of the requested relief, a focused remand directing a claim-specific futility analysis and a proper state-action / *Ex parte Young* assessment would correct the TAC-stage error without enlarging the case.

IV. State-Law Claims, § 1367(c), and Diversity: The judgment does not clearly identify the basis for dismissing state-law claims or address post-relocation diversity allegations.

The judgment does not clearly identify the jurisdictional basis for dismissing the state-law claims or explain how Hill’s post-relocation diversity allegations were treated. The judgment states that the RICO claim is dismissed with prejudice and the “remaining state law claims are dismissed without prejudice and without leave to amend.” (ECF 359.) The post-judgment order notes that Hill may refile in state court and that, absent a viable federal claim, the court “has no jurisdiction” because there was no complete diversity when the original complaint was filed. (ECF 365 at [pin].) The orders, however, do not say whether the state claims were dismissed under 28 U.S.C. § 1367(c)(3) or on a different jurisdictional or merits ground, and they do not engage the later allegations of Texas domicile, California citizenship of defendants, and continuing harms pleaded in the Fourth and Corrected Fifth Amended Complaints, which expressly invoked §§ 1332 and 1653. Clarifying whether the disposition rests on § 1367(c), and how the diversity allegations were

treated, is necessary both to ensure that the jurisdictional basis “affirmatively and distinctly” appears on the record and to avoid unnecessary preclusion disputes if Hill refiles in state court.

V. Cumulative Effect on Reviewability: In combination, these rulings leave the record opaque and prevent meaningful appellate review.

Finally, Hill submits that the cumulative effect of the opaque Rule 201 rulings, the absence of a reasoned Rule 15 futility analysis, the TAC-stage dismissal of the only state-actor path for Equal Protection and prospective relief, and the unclear footing for the state-law dismissals is structural rather than incidental. Under 28 U.S.C. § 636(b)(1), Rule 15, and basic Article III principles, that level of opacity impairs meaningful appellate review. See *SEC v. Chenery Corp.*, 318 U.S. 80 (1943) (explaining that a judgment must be reviewed on the grounds actually invoked by the decisionmaker).

Taken together, the unresolved ambiguity in the Rule 201 rulings, the lack of a futility analysis, and the undefined “modification” to the R&R create a reviewability problem under § 636(b)(1), *Khoja*, and *Chenery* because the record does not reveal which materials the court treated as part of the Rule 12 record, what facts it accepted, or why further amendment was deemed futile. A limited remand directing exhibit-specific judicial-notice and incorporation determinations, a targeted Rule 15 analysis keyed to the Corrected 5AC and alternative TAC, and a clear statement of the jurisdictional basis for any state-law disposition would

address those defects in a narrow, procedurally focused way and leave merits questions for later proceedings.

PRESERVATION OF ISSUES

Appellant preserved each issue raised on appeal in the pleadings, in objections to the magistrate judge's reports, and again in pre- and post-judgment Rule 59(e) briefing.

I. Judicial Notice, Sequencing, and Record Integrity (§ 636(b)(1))

Hill preserved his judicial-notice and § 636(b)(1) record-integrity objections in his TAC-stage RJNs and objections and in both pre- and post-judgment Rule 59(e) motions (e.g., ECF 102, 213, 217, 248, 286, 298, 360, 363).

II. Leave to Amend and Futility (FAC, TAC, 4AC, Corrected 5AC).

Hill repeatedly sought leave to amend, including (a) after the sua sponte post-answer dismissal of the FAC, (b) at the TAC stage through a proposed alternative TAC and related submissions, and (c) at the 4AC stage by moving to file the Corrected Proposed Fifth Amended Complaint and redline (ECF 310, 313, 317, 330). The PCL Defendants opposed at ECF 333; Hill replied at ECF 338, invoking *Foman*, *Lopez*, and *Eminence Capital*. He preserved those objections in his Rule 59(e) motion and reply (ECF 360, 363).

III. Equal Protection, State Action, Immunity, and *Ex parte Young*

At the TAC stage, Hill opposed dismissal of his Equal Protection claim, objected to the intent-only framing, and requested leave to add comparator and decisionmaker-knowledge facts, while contesting categorical Eleventh Amendment and quasi-judicial immunity and seeking prospective, non-monetary relief against appropriate State Bar and PCL officers (ECF 213, 217, 248). Subsequent pleadings, including the STAC-related submissions and the Corrected 5AC (ECF 313), supplied specific comparator and intent allegations, ongoing-harm facts, and *Ex parte Young*–style requests for forward-looking relief. Hill preserved these issues in his Rule 15 briefing (ECF 333, 338) and Rule 59(e) filings (ECF 360, 363).

IV. State-law disposition, § 1367(c), and Diversity / § 1653

In the Fourth and Corrected Fifth Amended Complaints, Hill expressly alleged his Texas domicile, the defendants’ California citizenship, and continuing harms (including refusal to correct transcripts, issue a degree, and account for funds), requested a clarified § 1367(c) determination, as well as invoked 28 U.S.C. §§ 1332 and § 1653 as independent bases for original jurisdiction at the R&Rs (including, but not limited to, ECF 351), and in his Rule 59(e) briefing (ECF 360, 363), which specifically argued that the diversity and § 1653 issues and the clarity of the state-law disposition had to “affirmatively and distinctly” appear on the record.

V. Structural and Sequencing Objections Under § 636(b)(1)

Hill timely objected to the magistrate judge's reports on multiple grounds, including: (a) the failure to rule on his alternative TAC / STAC request, (b) the use of bulk, non-itemized denials of merits-adjacent RJNs, and (c) the absence of claim-specific futility findings keyed to the Corrected 5AC (ECF 217, 351). He renewed these objections in his post-judgment Rule 59(e) motion and reply (ECF 360, 363), expressly framing them as structural errors under § 636(b)(1), Rule 15, and constitutional principles of due process, Petition Clause access, and Article III review.

ARGUMENT

I. The district court's handling of judicial notice and incorporation left this Court without a clear, itemized record of the facts underlying the Rule 12(b)(6) dismissal.

The district court denied later Rule 201 motions seeking judicial notice of materials bearing on plausibility and futility in a single, omnibus ruling, and limited earlier grants of judicial notice to the mere "existence" of the documents, without specifying what, if any, factual propositions it accepted from them. The result is an underdeveloped record for review. A limited remand would allow the district court to make individualized rulings on each request for judicial notice, consistent with *Khoja*, and to clarify which documents and factual propositions it relied on in dismissing the complaint.

A. Misapplication of Rule 201 and *Khoja v. Orexigen Therapeutics*, 899 F.3d 988 (9th Cir. 2018):

Both R&Rs collapsed judicial notice into a binary “existence-only” approach. *Khoja* requires purpose-specific rulings identifying which facts are noticed and for what limited purpose. By refusing to engage that framework, the court effectively stripped the record of regulatory facts central to plausibility and futility analysis.

B. Inconsistent Treatment of Official Records:

The documents came from the same governmental source that defendants invoked for immunity and accreditation authority. Accepting them for “existence” but not content deprived the plaintiff of symmetry and violated *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992 (9th Cir. 2010) (permitting notice of facts “not subject to reasonable dispute” from government websites).

C. Downstream Prejudice:

When R&R (ECF 213) and the Article III order (ECF 248) declared amendment futile at the TAC stage, they did so without reviewing the noticed facts showing that PCL’s termination and probation proved ongoing State Bar knowledge. That omission renders the futility finding “uninformed” under *Foman v. Davis* and *AmerisourceBergen v. Dialysist W.*, 465 F.3d 946 (9th Cir. 2006).

Under Federal Rule of Evidence 201 and Ninth Circuit precedent, a court deciding a Rule 12(b)(6) motion may take judicial notice of public records and incorporated documents only for limited, specified purposes. *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 999–1003 (9th Cir. 2018) (reversing where district court

‘improperly took judicial notice’ and used public records to resolve disputed facts at pleading stage). When plausibility turns on such materials, the court must identify what it is noticing and why, so that appellate review is possible.

Appellate review of a Rule 12 dismissal requires knowing **what materials** the district court accepted for judicial notice/incorporation and **why**.

D. The “existence-only” approach to official records conflicts with *Khoja* and impairs review.

The district court’s “existence-only” approach also failed to distinguish between disputed private assertions and official agency findings. Exhibits 201A and 201B were not plaintiff-created materials; they were the State Bar of California’s own inspection report and public announcement formally documenting PCL’s regulatory violations and the termination of its registration.² These are official opinions and actions, not contested private statements. Under Rule 201(b)(2) and Ninth Circuit precedent, **such agency determinations are noticeable not merely for existence but for the fact that the government made them**. See *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (taking judicial notice of contents of government website); see also *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458 (9th Cir. 1995) (court may notice factual findings of administrative bodies). By refusing to recognize the State Bar’s own official

² The exhibits at issue were not extrinsic evidence or private assertions. They were the formal findings of the State Bar of California, the same entity the district court later treated as a neutral regulator. Courts routinely distinguish between noticing that a document exists and noticing that an official act has occurred. Here, the State Bar’s public findings are not reasonably disputable; refusing to credit them was legal error that materially undermined the plausibility and futility analyses.

determinations—while simultaneously deeming their substance “implausible”—the court created a record logically inconsistent with Rule 201 and difficult for meaningful appellate review.

In the first Report and Recommendation (ECF 132 at 10-11), the magistrate acknowledged Plaintiff’s Rule 201 request (ECF 102) seeking notice of two official State Bar publications—Exhibits 201A and 201B—but limited judicial notice “only as to the existence of the attached State Bar exhibits, and not as to the validity or accuracy of their contents.” This narrow ruling, later reincorporated without analysis in the February 2025 R&R (ECF 213), conflicts with *Khoja v. Orexigen Therapeutics*, 899 F.3d 988 (9th Cir. 2018), and *Daniels-Hall v. NEA*, 629 F.3d 992 (9th Cir. 2010), which require courts to specify what adjudicative facts are noticed and for what limited purpose. By refusing to consider the State Bar’s own regulatory findings as facts it had officially adopted, the court stripped the Rule 12 analysis of undisputed context bearing directly on plausibility and scienter.³ That blanket exclusion was legal error and left the district judge without a record adequate for de novo review under 28 U.S.C. § 636(b)(1).

E. Bulk denials in the final order left no itemized notice or identifiable incorporation framework.

³ Notably, the exhibit documents facially contain regulatory findings of dozens of longstanding regulatory violations and the subsequent revocation of the law school’s charter.

In ECF 358, the court denied the later, merits-adjacent RJNs **in bulk** (276, 290, 301, 329; 263, 273, 278, 296), providing **no exhibit-by-exhibit rulings** that tie specific documents to the plausibility analysis.

The Rule 59(e) order (ECF 365) says individualized RJN treatment already existed because the court adopted the R&R and earlier orders. That **does not cure the problem**:

1. The earlier TAC-stage order (ECF 248) made **narrow, existence-only** grants (e.g., dates) and expressly framed supplemental materials as bearing on **amendment**, not Rule 12 merits.

2. The **later** RJNs—those aligned with the final Rule 12 decision—were disposed of with **one-line denials** in ECF 358.

Docket 365's explanation in support of its denial of the Rule 59(e) motion underscores the issues relevant to *Khoja* and clarity requirements: Appellate review of a plausibility call requires knowing exactly which materials the district court considered and for what purpose. Here, the court (a) relied on specific documents while (b) denying the later RJNs en masse and (c) never itemizing incorporation vs. notice vs. exclusion. That impairs review and warrants a **limited remand** for exhibit-by-exhibit rulings aligned to the Rule 12 analysis.

Under *Khoja*, courts should avoid opaque use of judicial notice/incorporation that impairs review. The solution is straightforward and minimally intrusive:

remand solely for exhibit-by-exhibit RJN rulings aligned to the Rule 12 analysis. That makes the judgment reviewable without reopening merits wholesale.

Recent Ninth Circuit authority reinforces that judicial notice cannot be used or denied in a manner that leaves the record jurisdictionally ambiguous. In *Rosenwald v. Kimberly-Clark Corp.*, No. 24-299 (9th Cir. Sept. 24, 2025), the Court vacated judgment and remanded for dismissal without prejudice, holding that jurisdiction must “affirmatively and distinctly appear” on the record and cannot rest on inference or judicial notice. The Court rejected the notion that jurisdictional sufficiency could be assumed from context, explaining that a reviewing court cannot “expand its jurisdiction” by presumption.

Here, the district court’s bulk denial of all Rule 201 motions (ECF 358) produced the same defect in reverse: it left the record so opaque that neither party nor this Court can discern which materials grounded the plausibility ruling. As *Rosenwald* makes clear, jurisdictional and procedural findings must be apparent on the record, not implied.

Because the district court refused to recognize the uncontroverted regulatory facts in Exhibits 201A and 201B (which consisted of official State Bar findings and a public news release) its plausibility and futility determinations were made on an artificially thinned record. That omission matters: those exhibits go directly to scienter, comparators, and the regulatory backdrop that distinguishes this case from a routine academic-dispute complaint. Without exhibit-specific rulings, this Court cannot tell what facts the district court credited or why, impairing review

under *Khoja*. A limited remand for exhibit-by-exhibit notice rulings will restore that clarity and bring the record into conformity with *Rosenwald* and *Khoja*.

F. The “adopted with a modification” notation, unexplained, further impairs review.

The R&R’s RICO analysis does not engage the concrete, monetary harms alleged in the Corrected Fifth Amended Complaint. Civil RICO standing requires a plaintiff to show (1) that the alleged harm qualifies as injury to “business or property,” and (2) that the harm was suffered “by reason of” the alleged RICO violation. *Canyon County v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

The Corrected 5AC did not merely allege disappointment with the quality of a legal education or an abstract “lost chance” at licensure; it alleged specific out-of-pocket payments (tuition, fees, and related costs), duplicative examination and preparation expenses, and concrete delay-related losses tied to Defendants’ alleged mail and wire fraud, falsified transcripts, and concealment. Those are classic monetary injuries to “business or property” under *Sedima* and *Canyon County*. By treating these allegations as if they were only an expectancy interest, akin to the disappointed card collectors in *Chaset v. Fleeer/Skybox Int’l, LP*, 300 F.3d 1083 (9th Cir. 2002), rather than grappling with the pleaded, domestic monetary losses, the R&R effectively misclassified the injury. The court never presents the reasoned analysis in response to appellants request for de novo review.

II. The court abused its discretion by denying leave to amend without engaging the Corrected Fifth Amended Complaint’s curative allegations.

Appellant asserts the district court abused its discretion under *Foman* and *Lopez* because it denied leave to amend without engaging the Corrected 5AC’s curative allegations. The TAC Equal Protection dismissal applied the wrong strict-scrutiny lens and denied leave to amend despite preserved comparator and intent facts.⁴

A. Rule 15(a)(2) requires a reasoned futility determination keyed to the proposed new facts.

Under *Foman* and *Rosenwald*, the appropriate course was to consider the proposed amendment, not to dismiss with prejudice without analysis.

The dismissal order mentioned Hill’s motion to amend but did not analyze the Corrected 5AC’s new allegations; the Rule 59(e) order then treated the omission as ‘harmless’ because a prior version of the proposed complaint had been attached elsewhere. Attachment, however, is not analysis: Rule 15 required the court to evaluate the curative allegations actually proffered and explain why they failed..

Hill sought leave to amend under Rule 15(a)(2) and lodged a Corrected Proposed Fifth Amended Complaint (ECF 313, via ECF 310/330) that added specific jurisdictional allegations, comparator and intent facts, and additional detail

⁴ Federal Standards of Review § 4.20, Leave to Amend Pleadings (observing that although review of a denial of leave to amend is deferential, “unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial,” and that prejudice, undue delay, bad faith, repeated failure to cure deficiencies, or futility are the only recognized grounds); Federal Litigation Guide § 1.132, Leave to Amend Freely Given (emphasizing that a district court must possess a “substantial reason” to deny amendment and that the five traditional factors define the limits of discretion). The record here reflects none of those factors.

directed at the gaps identified in prior orders. Although the TAC dismissal order had acknowledged that Hill's supplemental materials "may bear on [his] ability to amend" (1-ER-41–42 [ECF 248]), the final dismissal order denied leave to amend without making findings on futility, prejudice, bad faith, or delay, and without analyzing the new allegations in the Corrected 5AC.

Leave to amend 'shall be freely given when justice so requires' and may be denied only for reasons such as bad faith, undue delay, prejudice, repeated failure to cure, or futility, all supported by a reasoned explanation that engages the proposed new facts. (*Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc)). Denial of leave after new jurisdictional evidence and curative allegations is an abuse of discretion. (*Rosenwald v. Kimberly-Clark Corp.*, ___ F.4th ___ (9th Cir. 2025).)

The dismissal order itself resolves core issues in one-liners, denying both sides' RJNs en masse and denying leave to amend, without any paragraph-by-paragraph treatment of the Corrected 5AC's new facts or explanatory treatment of Hill's R&R objections. The terse text of the judgment order denies the RJNs (ECF 263/273/278/296 and 276/290/301/329) and the motion to amend (ECF 310/330) in a single stroke.

Three points follow.

First, the TAC dismissal order expressly acknowledged that Hill's supplemental materials "may bear on [his] ability to amend." 1-ER-41–42 (ECF 248). The

Corrected 5AC responded by adding specific curative allegations, including dated admissions by school and regulator, comparator and intent facts for the Equal Protection and Unruh claims, and duties and damages tied to particular regulatory provisions.

Second, that approach is difficult to reconcile with Rule 15(a)(2) and this Court's liberal-amendment cases. Under *Foman*, *Lopez*, and *Abagninin*, leave to amend "shall be freely given" and may be denied as futile only where additional facts "could not possibly cure the deficiency," supported by a reasoned explanation keyed to the proposed new facts. See *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc); *Abagninin v. AMVAC Chem. Corp.*, 545 F.3d 733, 742 (9th Cir. 2008). Here, the court declined to evaluate the Corrected 5AC's jurisdictional, comparator, and intent allegations at all.

Third, the Ninth Circuit's reasoning in *Rosenwald v. Kimberly-Clark Corp.* supports arguments of why the Corrected 5AC should have been considered on the merits. There, the Court recognized that jurisdictional defects may be corrected by amendment under 28 U.S.C. § 1653 and emphasized that, when curative facts are proffered, the trial court must evaluate them rather than dismiss outright. The panel vacated where jurisdictional sufficiency did not "affirmatively and distinctly appear" because the district court had not allowed or considered an available curative amendment.

Hill's position is that the same principle applies here: the Corrected 5AC supplied detailed curative allegations directed at the gaps identified in earlier

pleadings. Denying leave without engaging those corrections effectively foreclosed consideration of an amendment that directly addressed the identified deficiencies and supplied the facts necessary for jurisdictional and substantive review. Under *Foman* and *Rosenwald*, the appropriate course was to consider the proposed amendment, not to dismiss it with prejudice without analysis.

Simply noting the document existed is **not** a futility finding.

1. Procedural irregularities mattered because they foreclosed a futility review of the corrected allegations.

These procedural irregularities mattered because they foreclosed the required futility review of the corrected allegations.

The court denied leave to amend while not engaging the new, curative allegations in Plaintiff's Corrected 5AC (ECF 313, and additionally lodged as the proposed complaint in the formal request for leave to amend at ECF 330). The R&R (ECF 348) indicated review of the wrong document (ECF 310), which Appellant noticed to the court in the objections proffered supporting his request for de novo review (See ECF 351, footnote 1.).

The TAC stage was not the first time a corrective pleading went unaddressed despite a fully briefed Rule 15 motion. The court also failed to rule on Hill's alternative TAC amendment request, even though the TAC dismissal order acknowledged that his supplemental materials "may bear on [his] ability to amend"

(ECF 248). That repeated failure to exercise Rule 15 discretion infected later futility determinations, contrary to this Court’s instruction that amendment should be allowed unless futility is clear and explained with reference to the proposed new facts. See *Lopez*, 203 F.3d at 1130–31; *Eminence Capital*, 316 F.3d at 1051–52.

The Ninth Circuit has consistently held that even where multiple amendments have been filed, denial of further leave must rest on a reasoned finding that no additional facts could cure the defects. The court’s sua sponte, post-answer dismissal of the FAC, followed by blanket denials of later RJNs and a refusal to engage the corrected 5AC, produced an incomplete record and a misapplied futility finding.” [1-ER-11–13]

Notably, the dismissal orders were generally categorical and neither identified any adequately pleaded claims nor specified the claim-by-claim deficiencies to be cured. [1-ER-11–13]

Appellant’s Corrected Fifth Amended Complaint (ECF 313) was a curative pleading within the meaning of 28 U.S.C. § 1653 and *Foman v. Davis*, 371 U.S. 178 (1962). It supplied factual detail addressing the defects identified in the R&R, including jurisdictional and state-action facts, yet the district court refused to evaluate it. Under *Rosenwald v. Kimberly-Clark Corp.* (9th Cir. Sept. 24 2025), such a refusal deprives the record of the jurisdictional sufficiency that must ‘affirmatively and distinctly appear.’ In *Rosenwald*, the Ninth Circuit subject-matter jurisdiction must “affirmatively and distinctly appear” on the record and

cannot rest on presumption or inferences. (See *Rosenwald*, where the panel applied this standard to determine whether defective jurisdictional allegations in a Second Amended Complain could be constructively amended under 28 U.S.C. § 1653.)

The denial of leave to amend here lacked any of the findings or record development required under Rule 15(a)(2). The order contained no analysis of futility, bad faith, delay, or prejudice—indeed, it was entered while the record remained incomplete due to the court’s denial of discovery and judicial-notice motions. Without an evidentiary foundation, a futility determination is legally impossible. The Ninth Circuit has consistently held that even when multiple amendments have been filed, denial of further leave must rest on a reasoned finding that no additional facts could cure the defects. See, e.g., *Moore v. Kayport Package Express*, 885 F.2d 531 (9th Cir. 1989) (denial proper only after prior reasoned rulings identified specific defects); *Nguyen v. Endologix*, 962 F.3d 405 (9th Cir. 2020) (denial appropriate where plaintiff “made her best case and had been found wanting”); *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020) (amendment futile where legal theory, not factual insufficiency, was dispositive); *Abagninin v. AMVAC Chem. Corp.*, 545 F.3d 733 (9th Cir. 2008) (leave may be denied only if “allegation of other facts ... could not possibly cure the deficiency”); *Deutsch v. Turner Corp.*, 324 F.3d 692 (9th Cir. 2003) (denial proper where plaintiffs had already proffered facts and failed to meet tolling burden). **None of those conditions existed here.** The record lacks any indication that amendment would have been futile or prejudicial; instead, the denial occurred without findings and

without full record development, contrary to the liberal-amendment mandate of Rule 15(a)(2).

Remand is warranted for consideration of either the curative amendment or provision of opportunity to cure because *Rosenwald v. Kimberly-Clark Corp.* (9th Cir. 2025) reaffirmed that federal jurisdiction “must affirmatively and distinctly appear and cannot be helped by presumptions or argumentative inferences.” Where the record is incomplete or fails to make jurisdiction or procedural adequacy explicit, *vacatur and remand* are warranted to protect appellate review and ensure that judgment rests on an affirmatively supported record, not presumption.

B. The court misapprehended the record: “attachment” of ECF 313 is not a futility analysis.

The Rule 59(e) order treats the failure to analyze the **Corrected Proposed Fifth Amended Complaint** (ECF 313) as “harmless” because the document was attached elsewhere. But **attachment ≠ analysis**. Under *Foman*, *Lopez*, and *Eminence Capital*, the court had to **engage the new, curative allegations**—dates, actors, regulator/school admissions, comparator and intent facts, and quantified harms—and explain why they still could not cure. It did not. That is a misuse of discretion and warrants a targeted futility remand (or narrowly tailored leave).

“Attachment” is not a futility finding. The district court treated its failure to reference the Corrected Proposed Fifth Amended Complaint by its own docket number as “harmless” because the document appeared as an attachment to

other filings. But **Rule 15 requires analysis, not proximity**. Under *Foman v. Davis, Lopez v. Smith*, and *Eminence Capital*, the court had to **engage the new, curative allegations**—including the corrected dates, actors, regulator/school admissions, comparator and intent facts, and quantified harms—and **explain why those additions would not cure**. Simply noting that the pleading was “attached elsewhere” is not a futility determination; it is an **absence of one**. Denying leave to amend on that basis is a misuse of discretion.

The “harmless” label also fails because the record is opaque at the **decisive stage**. The dismissal order simultaneously **denied both sides’ later, merits-adjacent RJNs in bulk** and adopted the R&R “with a modification” it did not identify. Without **exhibit-by-exhibit rulings** and without a **reasoned futility discussion keyed to the corrected allegations**, there is nothing substantive to which “harmless” can attach. The Ninth Circuit cannot test a plausibility or futility outcome against an undefined evidentiary footing. The proper course is a **limited remand** directing (1) **itemized RJN determinations** aligned to the Rule 12 analysis and (2) a **targeted Rule 15 futility analysis (or narrowly tailored leave)** that squarely addresses the Corrected Fifth Amended Complaint’s curatives.

C. Unruled alternative TAC = failure to exercise Rule 15 discretion.

At the TAC stage, Appellant submitted an **Supplemented TAC** under Rule 15. The court dismissed without adjudicating that request, then later relied on a global “futility” posture without grappling with the **corrected** pleading’s new facts. Failing to rule on a live amendment request presents itself as an abuse of

discretion. The panel is asked to include in the remand instructions that the district court must rule on (or fold into) the alternative-TAC request within the targeted futility review.

D. *Rosenwald* and the Liberal Amendment Policy under § 1653

The principle that jurisdictional or curative defects should be corrected through amendment, not extinguished by dismissal, is long-standing. In *Rosenwald*, the Court reaffirmed that rule, holding that dismissal was warranted only because the record contained no factual amendment capable of establishing jurisdiction. Here, by contrast, Appellant presented a corrective pleading (See the Corrected 5AC at ECF 313) that did supply the missing factual detail. Had the district court engaged that pleading, jurisdiction and factual sufficiency could have been established, rendering dismissal unnecessary.

III. The TAC Equal Protection dismissal applied the wrong lens and, at minimum, required leave to amend. The error later infected the futility analysis.

The Court need not decide that Plaintiff “wins” his Equal Protection claim to recognize that the TAC-stage error matters. The question is whether a claim with acknowledged racial elements, dismissed without leave to amend and without an evidentiary record, can be treated as “futile” in a way that insulates that ruling from meaningful appellate review. The answer to that question has consequences beyond this case.

At minimum, the Court should vacate the Equal Protection dismissal and remand with instructions to: (1) adjudicate the claim on a complete record that includes the post-TAC regulatory closure and comparator evidence; or (2) state on the record why, in light of that evidence, the claim is nonetheless legally futile.

A. The TAC order treated the allegations as “impact only,” but the record presented (and proffered) *Arlington Heights* indicators of purpose.

At the TAC stage, the court dismissed Equal Protection primarily on intent grounds (ECF 248), characterizing the allegations as disparate-impact without non-conclusory purpose, and denied targeted leave to add comparator and decisionmaker-knowledge facts. 1-ER-40–42. That approach was too rigid at Rule 12 where Plaintiff alleged (and later proffered with particularity) a persistent disparity, regulator awareness, departures from ordinary enforcement, and side-by-side comparator treatment (Popp/Hill), the general *Arlington Heights* route to intent. See 2-ER-224; 2-ER-200-221; 2-ER-146 [Popp complaint/conduct allegations].

B. Disparate outcomes, decisionmaker knowledge, and selective enforcement plausibly allege intent or warranted leave.

While impact alone is insufficient, sustained disparities plus notice to responsible officials and selective enforcement (e.g., transcript correction for Popp but not Hill) support an inference of discriminatory purpose at the pleading stage. 2-ER-134; 2-ER-141-144. Rather than engage those particulars or allow a focused amendment to plead them with dates, actors, and mechanisms, the court denied

targeted leave, contrary to *Foman*'s presumption of liberality and the requirement of claim-specific futility findings. 1-ER-40–42; 1-ER-11–13.

C. The court's later "futility" ruling never confronted the proffered curatives.

By final judgment, the curatives were in the record (STAC and corrected 5AC), yet the court issued categorical dismissals and blanket RJN denials without analyzing the pleaded comparator/intent facts. 1-ER-11–13; 2-ER-224; 2-ER-233–236. The proper remedy is a limited remand directing a *Foman*-compliant, claim-specific futility analysis (or narrowly tailored leave), and, if Equal Protection is pursued for prospective relief, application of *Ex parte Young* to the appropriate state officer(s).

Notably, the R&R (at ECF 348) acknowledged a racial component to the dispute. That acknowledgement alone undercuts any suggestion that the Equal Protection theory was hopeless. Once the magistrate judge recognized that race plausibly pervaded the pattern of State Bar oversight at PCL, the Rule 15 presumption of "extreme liberality" required a targeted opportunity to amend the TAC to add comparator and intent allegations directed at the State Bar officers.

Treating such a claim as futile, without engaging those proffered curatives, was an abuse of discretion because adopting that analysis required either the strict-scrutiny lens emphasized in *SFFA*⁵ or, at minimum, leave to amend so Hill could

⁵ *Students for Fair Admissions SFFA* (2023) does not create a disparate-impact cause of action; it reiterates that state action employing race or its proxies triggers exacting scrutiny. It is cited here only to underscore why "impact + knowledge + departures" warrants careful review, not to alter the

add comparators and intent facts (which he later supplied in two proposed amendments). By denying amendment at TAC while applying an intent-only filter, the court prematurely foreclosed an EP claim capable of conforming to the proper standard. A short remand for a focused EP/futility analysis that addresses the now-pled comparators/intent is the narrow correction consistent with Rule 15.

D. Prejudice and State Action

The prejudice is practical and significant. Equal Protection liability here depends on state action; PCL alone is not a state actor. The relevant state actors are the State Bar and its officers, whose accreditation and enforcement decisions Hill alleges were infected by race-based selective non-enforcement. When the TAC order dismissed those defendants with prejudice, it extinguished the only avenue through which the Fourteenth Amendment could operate. That decision was never revisited, and later amendments were expressly constrained by it. There was no later procedural “cure”: the Equal Protection theory, and the prospective injunctive relief it supports, were locked out of the case at the TAC stage.

Because Hill later supplied the comparator and intent allegations the TAC order said were missing, and because Equal Protection claims with an acknowledged ‘racial component’ warrant careful, fact-sensitive scrutiny, a short remand for a proper EP/futility analysis is the correct, narrow fix.

Arlington Heights framework guiding intent at Rule 12. The district court’s refusal to consider Plaintiff’s *Arlington Heights* showing combined with its denial of leave to amend and foreclosed that analysis. See 1-ER-[pages reflecting L92–L120]; Preserved at 3-ER-[Rule 59(e) pages reflecting L87–L95].

E. Immunity Was Not Facial Under Rule 12(b)(6)

The district court's treatment of the State Bar and its officers as categorically immune was premature. At the pleading stage, immunity applies only when it is *facially apparent* from the complaint that the challenged acts were judicial in nature and within the scope of jurisdiction. *Mireles v. Waco*, 502 U.S. 9 (1991); *Stump v. Sparkman*, 435 U.S. 349 (1978). The TAC did not present such a record.

The conduct alleged, e.g., selective transcript correction, obstruction of access to academic records, and the administrative revocation of an unaccredited school's authority, was administrative and ministerial, not judicial. The Ninth Circuit distinguishes between adjudicative acts cloaked in quasi-judicial immunity and operational misconduct outside that protection. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429 (1993); *Partington v. Geduldig*, 961 F.2d 852 (9th Cir. 1992).

To be sure, Hill does not dispute that the State Bar has broad discretion in setting enforcement priorities. His point is narrower: once the TAC and objections identified specific State Bar officials, described the oversight and enforcement actions they took, and alleged that those actions occurred against a backdrop of known disparities and regulatory violations, the question whether those officials could be treated as state actors for Equal Protection purposes should not have been resolved at the TAC stage through a categorical dismissal with prejudice and without leave to amend. Under Fed. R. Civ. P. 12(b)(6) and § 636(b)(1), the court was required to take those factual allegations as true, draw reasonable inferences in Hill's favor, and address his state-action and *Ex parte Young* objections in a

reasoned way; if the court believed additional detail was necessary, the appropriate course was to permit focused amendment or require a more definite statement under Fed. R. Civ. P. 12(e), rather than foreclosing the only state-actor pathway at the pleading stage.

At minimum, Rule 12(b)(6) required that immunity be tested on a developed record, not presumed from institutional status.

F. Sovereign Immunity Does Not Apply Under *Ex parte Young*

Even assuming the State Bar qualifies as an arm of the state, the Eleventh Amendment does not bar prospective relief against state officers enforcing ongoing violations of federal law. *Ex parte Young*, 209 U.S. 123 (1908). Hill’s Equal Protection claim sought declaratory and injunctive relief to correct continuing discriminatory effects, including selective transcript practices and record concealment, that remain as propagated issues enforceable through the State Bar’s oversight. The district court’s categorical dismissal (on immunity grounds?) therefore misapplied the Eleventh Amendment because his claims and relief requests were non-monetary in context and thus facially fit squarely within *Young*’s prospective-relief exception. At minimum, dismissal at the Rule 12(b)(6) stage was premature because the nature and scope of the requested relief must be determined on a factual record. See *Doe v. Lawrence Livermore Nat’l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997); *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003).

The district court did not analyze the nature of the relief sought before invoking Eleventh Amendment immunity. That omission was legal error. *Will v.*

Michigan Dep't of State Police, 491 U.S. 58 (1989), and *Bair v. Shipp*, 692 F.2d 1201 (9th Cir. 1982), confirm that while a state agency itself may be immune from damages, its officers remain proper defendants for prospective injunctive relief. The TAC named individual officers performing administrative and enforcement functions. The categorical dismissal on immunity grounds therefore misapplied *Ex parte Young* and prematurely extinguished a viable federal claim.

G. Continuing Harms Noticed and Support Relief.

The controversy at time of dismissal had never lapsed into a closed, historical dispute: the ongoing refusal to correct transcripts, issue a degree, and account for funds constitutes a present deprivation. Additionally, although State Bar defendants were dismissed at the TAC stage, certain policies and management approaches continue presently. For jurisdictional purposes, those live injuries and requests for declarative or injunctive relief align with Hill's current Texas domicile to create complete diversity; for immunity purposes, they place the defendants' conduct squarely within *Young's* exception for ongoing violations of federal law. The district court's view, i.e., that jurisdiction and liability were frozen at the 2023 filing, is legally and factually inaccurate. Notably, Appellants denied RJN's in some cases presented evidence of the ongoing nature of the dispute.

H. Denial of Leave to Amend Was an Abuse of Discretion

Under *Foman v. Davis*, 371 U.S. 178 (1962), and *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000), denial of leave to amend is an abuse of discretion where

deficiencies can be cured by additional factual allegations. The Equal Protection claim was dismissed for want of (additional) comparator and intent details—facts that Hill later supplied. Those supplemental allegations corrected the very gaps identified by the district court, making futility an unsustainable rationale.

By denying amendment at the TAC stage and later invoking that same denial to justify final dismissal, the court allowed a self-created procedural bar to substitute for merits review. That error cascaded into the futility analysis accompanying the Fourth Amended Complaint and the Rule 59(e) ruling. Because the corrected pleadings now contain explicit comparator and intent allegations consistent with *SFFA* and *Arlington Heights*, a short remand for focused Equal Protection and futility review is both the narrow and proper remedy under Rule 15(a)(2).⁶

IV. The court should clarify that the state-law dismissals rest on § 1367(c) declination rather than merits/futility.

The final order dismisses state claims “without prejudice and without leave to amend.” The post-judgment order references lack of diversity and the ability to refile, which possibly sounds like a § 1367(c) declination; but the orders never clearly say so. A one-sentence clarification, e.g., “state claims are dismissed

⁶ See Federal Standards of Review § 4.20 (Thomson Reuters 2024) (“Although review of a denial of leave to amend is deferential, the policy of liberal amendment directs that ‘unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.’ Factors justifying a denial include prejudice, undue delay, bad faith, repeated failure to cure deficiencies, or futility.”); Federal Litigation Guide § 1.132 (2024) (“A district court must possess a substantial reason to deny a request for leave to amend; the five traditional factors—undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies, undue prejudice, and futility—define the limits of its discretion.”). See also *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

pursuant to 28 U.S.C. § 1367(c)”, will avoid preclusion disputes and ensure a clear path if Plaintiff refiles in state court.

The Magistrate misapplied 28 U.S.C. § 1367(c)(3) by treating Plaintiff’s remaining claims as “supplemental” after the Fourth Amended Complaint. Each complete amended pleading superseded the last, and both the Fourth and proposed Fifth alleged diversity jurisdiction under § 1332. Once diversity was pled, the court again possessed original jurisdiction; there were no “state claims” to decline under § 1367(c)(3). The R&R nevertheless recommended wholesale dismissal (“with prejudice and without leave to amend”) even though no defects were identified in the state-law counts. This reasoning conflates the discretionary declination power of § 1367(c) with an adjudication on the merits. Under *Ramirez*, *NewGen*, and *Rosenwald*, jurisdictional sufficiency must “affirmatively and distinctly appear” from the operative pleadings. Here, the court froze its analysis at the original complaint, refused to evaluate the new diversity allegations, and dismissed the case as if none existed.

A. *Rosenwald* and the Liberal Amendment Policy under § 1653

Hill does not dispute that his initial complaints, filed while he was domiciled in California, did not establish diversity jurisdiction. He is not asking the Court to “create” diversity after the fact.

After he relocated to Texas, newly alleged acts of misconduct and effects continued; some of that post-relocation conduct was presented to the court through

contemporaneous requests for judicial notice. The Fourth and proposed Fifth Amended Complaints expressly alleged Hill's Texas domicile, the defendants' California citizenship, and ongoing harm (including on the state-law claims) arising from the same course of conduct. In that posture, Hill contends that the district court could not simply treat the earlier, non-diverse complaints as permanently controlling for jurisdictional purposes and enter final judgment without addressing the later jurisdictional allegations. Rather, once the operative and proposed pleadings alleged complete diversity in the context of a still-live controversy, the court was required to consider whether those allegations, consistent with 28 U.S.C. § 1653 and this Court's precedent on curative jurisdictional amendments, made diversity "affirmatively and distinctly" appear on the record or, alternatively, to state clearly that it was declining supplemental jurisdiction over the state-law claims.

Under 28 U.S.C. § 1653 and Rule 15(a)(2), liberal amendment to cure jurisdictional or factual gaps is mandatory where, as appears here, the proffered amendment is concrete and timely. By refusing to consider the Corrected 5AC, the district court effectively nullified the statutory mechanism Congress provided to cure such deficiencies. A remand to consider the pleading's curative allegations is therefore consistent with both *Rosenwald* and the text of § 1653.

Consistent with 28 U.S.C. § 1653 and Rule 15(a)(2), the district court at least had to address whether the Corrected 5AC's new jurisdictional and factual allegations cured any defect; it could not simply invoke the time of filing rule and

treat jurisdiction as frozen by the original complaint while ignoring those proposed curatives. Yet the order denying leave to amend did not engage the Corrected 5AC's new allegations despite the parties' full Rule 15 briefing (ECF 333, 338). That failure deprived the Appellant of the meaningful opportunity to amend and pursue his claims on the merits' that *Foman* and *Lopez* contemplate.

B. Continuing harms and Plaintiff's relocation to Texas support diversity jurisdiction under § 1653 and Rosenwald.

Hill recognizes the general "time-of-filing" rule and does not contend that § 1653 permits jurisdiction to be created by a post-filing change in domicile. His point is narrower. This Court has recently reiterated that subject-matter jurisdiction must "affirmatively and distinctly appear" on the record and that curative amendments should be recognized where they exist. The question here is not simply whether Hill will ultimately prevail on diversity, but whether the judgment rests on a jurisdictional analysis consistent with that guidance.

The magistrate judge's conclusion that diversity jurisdiction "never existed" rested on an incomplete premise: that citizenship is frozen at the moment of first filing and that no defect in the jurisdictional allegations could be cured by amendment. After the initial complaint, Hill became a Texas domiciliary. As discussed above, his claims involve continuing conduct and harms, including the refusal to correct transcripts, issue a degree, or refund monies, and regulatory failures that remained live throughout the case. In the Fourth and proposed Fifth

Amended Complaints, Hill expressly alleged his Texas domicile, the defendants' California citizenship, and ongoing injuries, and he invoked §§ 1332 and 1653.

Hill does not argue that continuing conduct alone overrides the time-of-filing rule. Rather, his submission is that once he alleged complete diversity and ongoing injuries in the operative and proposed pleadings, the district court could not simply disregard those allegations by declaring that diversity “never existed” and “could not be fixed by amendment.” Under § 1653 and this Court’s curative-amendment cases, those later pleadings were the proper vehicle to ensure that whatever jurisdictional basis the court relied on “affirmatively and distinctly” appeared on the record—either by acknowledging that diversity was never available and clearly dismissing the state claims under § 1367(c), or by addressing the sufficiency of the later diversity allegations on the merits.

Even if this Court ultimately concludes that diversity jurisdiction did not attach, the path the district court chose matters. By treating jurisdiction as permanently fixed at the 2023 complaint and dismissing all remaining claims wholesale after the Fourth Amended Complaint, the court both (a) declined to engage the later jurisdictional allegations and (b) failed to make clear whether the state-law dismissal rested on § 1367(c) declination or on a merits-based disposition.

The R&R (ECF 348) illustrates the ambiguity. It recommended dismissing the “remaining state law claims without prejudice,” asserted that Hill failed to plead citizenship adequately, and concluded that “this is not an error that could be fixed by amendment” because “diversity jurisdiction is assessed at the time the lawsuit is

commenced.” The final orders then dismissed the state-law claims “without prejudice and without leave to amend,” while the Rule 59(e) order added that Hill “cannot rely on diversity jurisdiction” because there was no complete diversity at the time of the original complaint. The orders did not, however, state that the dismissal of those claims rested on § 1367(c).

Rosenwald clarifies why that omission matters. *Rosenwald* cautioned that jurisdictional sufficiency and the basis for dismissal must “affirmatively and distinctly appear” from the record, and that courts may not leave the jurisdictional ground to implication. Here, the district court referenced lack of diversity but did not squarely state whether it was declining supplemental jurisdiction under § 1367(c) or entering a merits dismissal. In light of *Rosenwald*, a clean jurisdictional statement—expressly citing § 1367(c) if that was the basis, and expressly addressing the later diversity allegations if not—is necessary both to ensure that the judgment rests on a jurisdictional ground that clearly appears on the face of the record and to avoid unnecessary preclusion disputes if Hill refiles in state court.

Under § 1653 and this Court’s curative-amendment cases, the operative and proposed pleadings were the proper vehicle to make diversity “affirmatively and distinctly” appear on the record, or, if the court chose to decline supplemental jurisdiction instead, to say so clearly.

By the time of the Fourth and Proposed Fifth Amended Complaints, the parties were completely diverse and the live controversy fell within 28 U.S.C. § 1332(a). The “time-of-filing” rule, drawn from *Mollan* and *Grupo Dataflux*, applies

to static disputes, not to ongoing injuries whose factual posture changes while the case remains active. At minimum, 28 U.S.C. § 1653 required the district court to permit amendment to reflect the corrected domicile and existing diversity. By treating jurisdiction as permanently fixed at the 2023 complaint and dismissing all claims wholesale under § 1367(c)(3), the R&R misapplied both precedent and statute. A limited remand is therefore necessary so the district court can (1) clarify whether it was exercising supplemental jurisdiction and, if so, whether it declined that jurisdiction under § 1367(c), and (2) state explicitly how it treated Hill's post-relocation diversity allegations and § 1653 request.

C. Clarifying the basis for state-law dismissal is necessary for meaningful review and any future state-court proceedings.

The same continuing violations that keep Hill's Equal Protection claim within *Ex parte Young*'s prospective-relief framework also sustain diversity jurisdiction. The controversy had not lapsed into a closed, historical dispute: the ongoing refusal to correct transcripts, issue a degree, and account for funds constitutes a present deprivation. For jurisdictional purposes, those live injuries align with Hill's current Texas domicile to create complete diversity; for immunity purposes, they place the defendants' conduct squarely within *Young*'s exception for ongoing violations of federal law. Both doctrines support that the district court's view, i.e., that jurisdiction and liability were frozen at the 2023 filing, was legally and factually incomplete.

V. Evaluation of the Fifth Amended Complaint.

The Corrected Proposed Fifth Amended Complaint (ECF 313) was before the district court when it entered final judgment, but the court never addressed its substance. Under *Foman v. Davis*, 371 U.S. 178 (1962), and *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000), denial of leave to amend without analyzing the proposed pleading is an abuse of discretion. Pursuant to 28 U.S.C. § 1653, this Court may either consider the Fifth Amended Complaint directly to determine whether it cures the alleged deficiencies, or remand with instructions to grant leave to file it. Either approach would resolve the procedural defect while maintaining a narrow scope of remand consistent with the interests of judicial economy and the record's existing posture.

Relief (Issue IV): Remand for the district court to expressly state that dismissal of state claims rests on § 1367(c) (non-merits declination).

A. The combination of opaque judicial-notice rulings, unreasoned futility findings, and TAC-stage errors is structural.

Even apart from the specific Rule- and § 636(b)(1)-based errors, the combination of opaque rulings and bulk denials raises a structural reviewability concern. The Supreme Court has cautioned that serious constitutional questions arise where litigants are effectively denied a judicial forum for colorable claims. See *Webster v. Doe*, 486 U.S. 592, 603 (1988) (“A serious constitutional question would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.”). Due process and Article III require a meaningful

determination by a neutral judge who personally evaluates contested matters, not merely a nominal adoption of a recommendation. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Here, the perfunctory adoption of the R&R, coupled with unexplained denials of judicial-notice motions and the absence of a reasoned Rule 15 analysis, left the parties and this Court unable to discern the record reviewed.

Under § 636(b)(1), *Chenery*, and *Khoja*, dispositive rulings must rest on a discernible evidentiary footing and articulated grounds, so that appellate review does not depend on speculation.

Even apart from the specific Rule and § 636(b)(1) errors, the combination of opaque rulings and bulk denials raises the specter of a structural problem because the right to judicial review is not a procedural courtesy but a constitutional guarantee. *See Webster v. Doe*, 486 U.S. 592, 603 (1988) (“A serious constitutional question would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.”).

The Due Process Clause and Article III require that every litigant receive a meaningful determination by a neutral judge who personally evaluates contested matters. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). That opportunity is meaningless if review is nominal rather than reasoned. Article III further vests the judicial power in judges who must exercise independent judgment, not deferential ratification. *Nguyen v. United States*, 539 U.S. 69, 81 (2003); *United States v. Reyna-*

Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). This principle is recognized in the Federal Standards of Review.⁷

B. These errors cannot be treated as harmless because they shape the framework for decision, not just the outcome.

The order states that the length of time any motion “remained pending does not provide a basis to revisit judgment.” Hill does not contend that delay, standing alone, is a Rule 59(e) ground. His point is narrower: dispositive rulings were entered while curative pleadings and merits-adjacent Rule 201 motions remained unresolved or were later denied in bulk, leaving the Rule 12 record incomplete and opaque. That is a reviewability and Rule 15 problem, not a calendaring complaint.

In Hill’s view, it is this sequence, not any alleged motive, that now impairs review and warrants a limited remand for exhibit-specific judicial-notice and incorporation rulings, together with a focused Rule 15 futility analysis keyed to the Corrected Proposed Fifth Amended Complaint and the alternative TAC request.

That incompleteness is structural in the sense that it prevents this Court’s Article III review under § 636(b)(1) on the same evidentiary footing the district court used. Even if characterized as non-structural, the error is not harmless

⁷ See Federal Standards of Review § 13.07, Magistrates’ Findings and Recommendations (explaining that when a magistrate performs a case-dispositive function, “he must submit proposed factfindings and recommendations for disposition to the district court for final authorization,” and that if a party objects, “the district court must make a de novo determination at least as to those portions to which objection was made”); *id.* § 2.03, Applicability of Rule 52: Motions, Magistrates, Masters, Etc. (noting that while a de novo hearing is not always required, Article III and § 636(b)(1) demand “a review of the record” sufficient to show that the district judge personally exercised independent judgment). Those standards confirm that an order adopting a magistrate’s report “with a modification” but without identifying the modification or addressing specific objections fails to satisfy the statutory and constitutional requirement of a true de novo determination.

because it leaves substantial rights, including amendment, Equal Protection, and jurisdictional clarity, unresolved on a fully articulated, reviewable record. The district court's unexplained "modification" to the R&R, its bulk denials of later Rule 201 motions, and the absence of claim-specific futility findings make it impossible to trace reasoning to evidence without conjecture. When a judgment cannot be reviewed without speculation about what the court considered and why, the appropriate remedy is vacatur and remand for findings capable of appellate review. *See Reyna-Tapia; Khoja; Chenery.*

The problem is manifested in the treatment of the Corrected 5AC. The magistrate's report characterized that pleading as adding no substantive facts, and the district court adopted that conclusion. In fact, the Corrected 5AC contained jurisdictional and factual curatives that, under *Foman* and *Eminence Capital*, required individualized analysis of futility. Denying leave to amend without addressing those proposed curative allegations risks an abuse of discretion under Rule 15(a)(2).

The constitutional doctrines reflected in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), *Mathews v. Eldridge*, 424 U.S. 319 (1976), *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), and the Petition Clause reinforce the expectation that litigants receive a meaningful judicial determination of the law governing deprivations of protected interests. *Mullane* and *Mathews* require procedures that afford a real opportunity to be heard; *Marbury* confirms that Article III courts, not administrators or adversaries, must supply the controlling legal

judgment; and the Petition Clause protects access to a judicial forum for redress; these principles are implemented in part through 28 U.S.C. § 636(b)(1), which requires district judges to make a de novo determination of objected-to portions of magistrate recommendations.

Here, the district court's perfunctory adoption of the R&R, its refusal to itemize Rule 201 rulings or to tie incorporation decisions to the Rule 12 analysis, and its denial of amendment without futility findings together substantially hinder meaningful appellate review. Under *Reyna-Tapia*, *Khoja*, and *Chenery*, such opacity warrants vacatur and remand for reasoned rulings.

A limited remand corrects deficiencies without disturbing settled portions of the judgment. That approach ensures compliance with Article III, § 636(b)(1), and Rule 15 while preserving judicial economy.

C. The Equal Protection error cannot be treated as harmless because it distorted the pleading standard.

The Equal Protection ruling exemplifies the structural error running through the case: a pattern of resolving factual and intent issues through procedural shortcuts rather than the proper constitutional and Rule 15 frameworks. By treating administrative misconduct as immune, intent as dispositive, and amendment as futile, the district court substituted categorical presumptions for the individualized, evidence-based analysis that *SFFA*, *Arlington Heights*, and *Foman* require. The result was not merely a premature dismissal, but a distortion of the pleading standard itself.

Accordingly, the TAC Equal Protection error cannot be dismissed as harmless or as “cured” by later opportunities because it eliminated the sole state-action pathway and prevented any reasoned futility analysis of a claim the court itself acknowledged had a ‘racial component.’

A limited remand to restore the State Bar officers in their official capacities and to conduct a proper *Arlington Heights* and *Ex parte Young* analysis is the narrow correction Rule 15 and this Court’s pro-amendment precedent require.

D. The Fifth Amended Complaint and residual RICO claim illustrate the concrete prejudice from the incomplete record.

The Magistrate’s statement that RICO was Hill’s “only remaining federal claim” was inaccurate. The Equal Protection claim, dismissed at the TAC stage, was expressly identified as potentially amendable. Hill’s subsequent pleadings included comparator and intent facts satisfying that invitation, but the R&R ignored those additions. Equally problematic, the Magistrate and District Judge had already recognized that the RICO deficiencies could be cured when they granted leave to amend after the TAC. Having done so, the court could not later declare the same claim “implausible” without analyzing the new allegations. The Corrected 5AC alleged coordinated use of mail and wire communications to misrepresent PCL’s status and manipulate transcripts were directed precisely at inducing, preserving, and exploiting student payments and regulatory cover; the claimed injuries (tuition, exam- related costs, and licensure delay) are the immediate and intended financial consequences of the scheme. At the pleading stage, those allegations appear

sufficient to “nudge” the RICO claim from conceivable to plausible under *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995–97 (9th Cir. 2014), which emphasizes that the *Twombly/Iqbal* inquiry for civil RICO focuses on whether the complaint, taken as a whole, plausibly alleges a pattern of racketeering and a direct monetary injury. The plausibility finding was uninformed because the declaration that “no federal claims remain” rested on an incomplete record. Because that conclusion supplied the sole predicate for declining jurisdiction under § 1367(c)(3), the error infected the entire dismissal order and warrants limited remand for clarification and proper analysis under *Foman* and *Lopez*.

ORAL ARGUMENT STATEMENT

Oral argument will materially aid the Court to determine the appropriate scope of a limited remand to correct the errors indicated.

CONCLUSION

Appellant respectfully asks the Court to vacate the judgment in part and remand with instructions to:

1. Enter exhibit-by-exhibit rulings on the pending Rule 201/judicial-notice and incorporation requests aligned with the Rule 12(b)(6) analysis;
2. Reconsider the denial of leave to amend under Rule 15(a)(2) in light of the Corrected Proposed Fifth Amended Complaint (ECF 313), making express findings on futility, delay, bad faith, and prejudice, and adjudicating the alternative TAC amendment request;

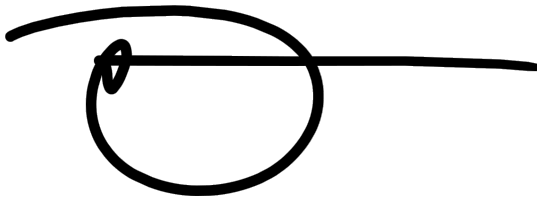
3. Revisit the TAC-stage Equal Protection disposition under the correct intent/comparator framework, with leave to amend as appropriate; and
4. Clarify that dismissal of any state-law claims rests, if at all, on a non-merits declination under 28 U.S.C. § 1367(c), or reconsider subject-matter jurisdiction in light of the diversity allegations under § 1332 and § 1653.

This limited remand respects finality while ensuring the judgment rests on a clear, reviewable record, that Rule 15 and Equal Protection are applied correctly, and that the district court adjudicates the alternative-TAC amendment request as part of the targeted futility analysis.

STATEMENT OF RELATED CASES

Appellant is not aware of any related appeals pending in this Court.

Dated: November 24, 2025

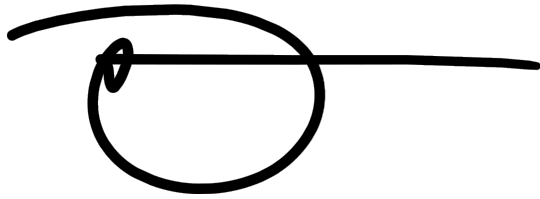
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Respectfully submitted,

Todd R. G. Hill
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CERTIFICATE OF COMPLIANCE

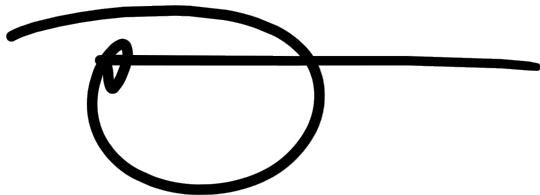
This brief contains approximately 12, 986 words, excluding the parts exempted by Fed. R. App. P. 32(f). It complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5)–(6).

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Todd R.G. Hill
Date: November 24, 2025

CERTIFICATE OF SERVICE

I certify that on November 24, 2025, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit using CM/ECF, which will send notice to all registered counsel of record.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Todd R.G. Hill
Date: November 24, 2025

ADDENDUM OF RULES AND STATUTES (9TH CIR. R. 28-2.7)

Fed. R. App. P. 4(a)(4)(A)(iv) — *Effect of a Motion on a Notice of Appeal.*

“If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: ... (iv) to alter or amend the judgment under Rule 59.”

Fed. R. Civ. P. 15(a)(2) — *Amended and Supplemental Pleadings.*

“In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. **The court should freely give leave when justice so requires.**”

Fed. R. Civ. P. 59(e) — *Motion to Alter or Amend a Judgment.*

“A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”

Fed. R. Evid. 201(b), (c), (d), (e) — *Judicial Notice of Adjudicative Facts.*

(b) The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) The court may take judicial notice on its own; or must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) The court may take judicial notice at any stage of the proceeding.

(e) On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.

28 U.S.C. § 1367(c) — *Supplemental Jurisdiction.*

“The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction,
or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.”